

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

D.A. INTERNATIONAL CASTING
COMPANY, INC.,

Plaintiff,

V.

JOHN WHITAKER, et al.,

Defendants.

Case No. 1:06-CV-02830

JUDGE ANN ALDRICH

MEMORANDUM AND ORDER

In its January 18, 2007 memorandum and order [Docket No. 13], the court denied plaintiff D.A. International Casting Company, Inc.'s ("DAI") motion to remand this case to the Richland County Court of Common Pleas [Docket No. 5] without prejudice, finding that the evidence provided by defendants John Whitaker ("Whitaker"), Andrea Whitaker, and Whitaker and Company (collectively, the "Whitakers") made it more likely than not that the total amount in controversy in this matter exceeded \$75,000, giving this court subject matter jurisdiction to sustain removal. However, the court gave DAI an opportunity to re-file its motion for remand, no later than February 16, 2007, if it could be established that the injunction sought in Count 1 of its complaint was worth less than \$40,904.73 as a legal certainty.

DAI did not file the instant motion to remand [Docket No. 14] until February 22, 2007. It has offered no explanation as to why it failed to meet the deadline set forth in the court's January 18 memorandum and order. More to the point, it has not offered *any* evidence to counter the evidence produced by the Whitakers on the value of the injunction sought. DAI attempts to argue that because the allegedly misappropriated trade secrets have caused no damage to it, that concludes the inquiry into the injunction's value. DAI is mistaken, for the reasons stated in the court's January 18 memorandum and order. The value of the injunction may be determined *either* by reference to the damage caused *or*

to the value of the object at issue; defeating diversity jurisdiction requires a finding that *both* the damage caused *and* the value of the object at issue are less than the jurisdictional limit. That no damage has been caused does not end the inquiry; if it did, if the court accepted DAI's proposed interpretation, it would allow a devious plaintiff to steal valuable trade secrets, such as the recipe for Coca-Cola, and conceal them without using them, to avoid jurisdiction even though all other prerequisites for diversity jurisdiction have been met.

Because DAI appears unwilling or unable to provide evidence rebutting the Whitakers' evidence that the injunction is worth more than \$40,904.73, the court denies the motion to remand [Docket No. 14]. The case management conference currently set in this matter for Friday, March 16, 2007, at 11:00 a.m. shall proceed as scheduled.

IT IS SO ORDERED.

/s/Ann Aldrich
ANN ALDRICH
UNITED STATES DISTRICT JUDGE

Dated: March 13, 2007